

DIVISION III

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
OLLY NEAL, Judge

CACR05-1365

June 28, 2006

STEVEN D. MARTIN
APPELLANT

v.

STATE OF ARKANSAS
APPELLEE

AN APPEAL FROM THE
UNION COUNTY CIRCUIT
COURT [CR-03-221-1]

HONORABLE HAMILTON H.
SINGLETON, JUDGE

AFFIRMED; MOTION GRANTED

On July 7, 2003, appellant Steven D. Martin pleaded guilty to the charge of possession of cocaine and was sentenced to five years' probation. At that same time, appellant was made aware of the terms and conditions of his probation, which included, among other things, that he report as directed to his probation officer, refrain from using illegal substances, and pay monthly probation fees. On May 27, 2005, the State filed a petition to revoke appellant's probation, in which the State alleged that appellant had failed to report to his probation officer and failed to pay his fees. Following a hearing on the petition to revoke, the trial court found that appellant had violated the terms and conditions of his probation and sentenced appellant to serve ten years in the Arkansas Department of Correction.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals, appellant's counsel has filed a motion to withdraw on the ground that this appeal is wholly without merit. The motion was accompanied by a brief purportedly discussing all matters in the record that might arguably

support an appeal, including the adverse rulings, and a statement as to why counsel considers each point raised as incapable of supporting a meritorious appeal. Appellant was provided with a copy of his counsel's brief and notified of his right to file pro se points for reversal. Appellant elected not to file points for reversal.

A review of the record and counsel's brief reveals that the only adverse ruling was the trial court's decision to revoke appellant's probation. In order to revoke probation, the State must prove by a preponderance of the evidence that the defendant violated a condition of probation. *Minniefield v. State*, ___ Ark. App. ___, ___ S.W.3d ___ (Jan. 11, 2006). The State needs only to prove that the defendant committed one violation of the conditions of his probation. *Turner v. State*, ___ Ark. App. ___, ___ S.W.3d ___ (Jan. 11, 2006). When appealing a revocation, the appellant has the burden of showing that the trial court's findings are clearly against the preponderance of the evidence. *Id.* Evidence that is insufficient for a criminal conviction may be sufficient for the revocation of probation or suspended sentence. *Id.* Because the determination of a preponderance of the evidence turns on questions of credibility and weight to be given testimony, we defer to the trial judge's superior position. *Id.*

Appellant's probation officer, Shakerah Moore, testified that appellant had missed nineteen out of twenty-five office visits. She explained that, in 2005, appellant had failed to report in January, February, June, July, and August. Ms. Moore also testified that appellant had failed to pay his fees and that, in May 2005, appellant tested positive for cocaine and marijuana.

Appellant testified that he was aware that, as a condition of his probation, he was to report to his probation officer. He said that the reason he failed to report was because he was on drugs.

The evidence established that appellant violated three of the conditions of his probation, any one of which would support the revocation of his probation. Therefore, the trial court did not err when it found that appellant had violated the terms and conditions of his probation.

Accordingly, the record has been reviewed in accordance with Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals. We conclude that there were no errors with respect to rulings adverse to appellant and that this appeal is without merit. Counsel's motion to be relieved is granted, and the revocation of appellant's probation is affirmed.

Affirmed; counsel's motion to be relieved granted.

GLOVER and ROAF, JJ., agree.